

overcome the hot cut barrier to entry that is the basis for the national finding of impairment and all of the other economic and operational barriers to entry that the Commission identified as appropriate topics for consideration in a potential deployment analysis.<sup>33</sup>

44. In state proceedings, I applied this “sufficiency of scale” test by eliminating from consideration any potential triggering carrier that has not achieved at least a 1% market share in the relevant geographic market. This minimal market share screen is highly conservative because it looks at the *cumulative* market penetration for the carrier over time. A carrier may have taken two years or more to achieve that 1% market share. If so, its experience with hot cut activity is unlikely to mirror the high-volume, long-duration hot cut activity that would occur if UNE-P were no longer available and all mass-market customers had to be served via UNE-L. The Commission may wish to “raise the bar” and establish a higher market share threshold, such as 3% or 5%.<sup>34</sup>

**C. “Automated” Application of Trigger Analysis**

45. The analytical criteria for potential triggering companies that I described above can be applied “manually” to the trigger claims of any incumbent in any state. To

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<sup>33</sup> This means that the company in question must have demonstrated, by the sheer scale of its participation in the market, that it has overcome the operational and technological issues associated with, *e.g.*, UNE-L, OSS, collocation, transport and EELs necessary for mass-market entry.

<sup>34</sup> The spreadsheet tool provided in conjunction with this declaration is designed to permit the user to establish the specific threshold.

“automate” the analysis as much as possible, however, my colleagues and I developed a spreadsheet tool that facilitates the processing of potentially large amounts of wire-center-specific data and permits sensitivity analyses that show the effect of changing the criteria for acceptance or rejection of a trigger claim. As noted above, the SBC and Verizon California versions of this spreadsheet tool are provided as electronic-only Exhibits 2 and 3 to this declaration; instructions for use of the tool are provided as Exhibit 4.

### **III. ANALYSIS OF TRIGGERS ON A MARKET-BY-MARKET BASIS**

#### **A. Background and Approach to Trigger Analysis**

46. In the California mass-market switching proceeding, SBC and Verizon limited their filings to claims concerning the retail trigger, which relates to the number of competitors that are self-deploying switching to provide retail local exchange services to mass-market customers located in each geographic market. The analysis that I report in this section of my declaration therefore focuses on SBC’s and Verizon’s retail trigger filings in California and does not address wholesale triggers.
47. I have analyzed these trigger filings from the perspective of MCI’s proposed wire-center market definition. (Both SBC and Verizon provided wire-center-level information, even though they proposed more aggregated market definitions.) My analysis employs the spreadsheet tool that I described in the preceding section of my declaration. The proprietary versions of electronic-only Exhibits 2 and 3 are versions of the spreadsheet tool populated with the data that SBC and Verizon,

respectively, provided in the California mass-market switching impairment proceeding.

48. As I describe in more detail below, my overall approach to these screens in the California state proceeding was very conservative. In many instances, I chose not to eliminate potential triggering companies even though there were viable interpretations of the Commission's *Triennial Review Order* requirements and rules that would exclude one or more of the companies that I allowed to "pass through" the screen in question.
49. I took this cautious approach to ascertain whether the ILECs' claims of no impairment had any facial validity whatsoever, even without making what some might consider to be close judgment calls. I discovered that there is little need for the Commission to make any such close calls. That is, there is no wire center anywhere in the SBC and Verizon California service territories in which the ILECs have identified at least three plausibly legitimate trigger candidates that self-deploy switching to serve mass-market customers. *Even if one does not exclude cable competitors, there is only one wire center (which is in the SBC California service territory) in which there are at least three plausibly legitimate trigger candidates.*

**B. Most of the Potential Triggering Companies Identified by SBC and Verizon Do Not Provide a Real and Current Competitive Alternative for Most California Mass-Market Customers**

50. SBC identified thirteen companies as counting toward the retail trigger in the California MSAs for which it sought a finding of no impairment. These

companies are: Advanced Telecom Group, Allegiance Telecom, AT&T, Comcast, Cox, ICG Communications, MCI (shown as WorldCom), MPower Communications, RCN, TelePacific Communications, Telscape Communications (shown as Pointe Comm, Inc.), XO, and Xspedius. Verizon initially identified eight companies, many of which duplicated the SBC list: Allegiance, AT&T, MCI (shown as WorldCom), MPower Communications, SBC Telecom, TelePacific Corporation, Telscape Communications, and XO California, Inc. In the rebuttal round, Verizon added two cable companies, Comcast and Cox, to its list of potential triggering carriers.

51. In the discussion that follows, I briefly explain how I applied the trigger screens to these companies. In some instances, CLEC confidentiality concerns preclude public identification of specific company names in my discussion of the trigger screens. Proprietary Exhibit 5 summarizes the results of applying my trigger screens to the data for these carriers.

**1. Advanced Telecom Group**

52. In response to data requests from the CPUC, Advanced Telecom Group ("ATG") indicated that it does not provide residential service; therefore, I eliminated ATG from the analysis based on my trigger screen that determines whether a carrier offers retail local exchange service to *residential* mass-market customers. Even if I had not eliminated ATG on the basis of the residential screen, ATG would have dropped out of **\*\*\*BEGIN PROPRIETARY END PROPRIETARY\*\*\*** based

on the 1% market share screen. **\*\*\*BEGIN PROPRIETARY END**

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**2. Allegiance Telecom**

53. Allegiance provides telecommunications services primarily to small- and medium-sized businesses. Allegiance confirmed in response to a telephone interview that it does not provide residential service in California;<sup>35</sup> therefore, I eliminated Allegiance from the analysis based on my trigger screen that determines whether a carrier offers retail local exchange service to *residential* mass-market customers. Even if I had not eliminated Allegiance on the basis of the residential screen, Allegiance would have dropped out of **\*\*\*BEGIN**

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54. An additional consideration with respect to Allegiance is its acquisition by XO. This acquisition was pending at the time of the close of the CPUC record. The spreadsheet tool was formatted to permit combination of the Allegiance and XO data, and the final results I report herein reflect the treatment of the two companies as a single, combined CLEC.

**3. AT&T**

55. Although AT&T provides local exchange service to both residential and business mass-market customers in California, testimony filed at the CPUC by AT&T

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<sup>35</sup> Telephone interview with Michael Morris, Director of State Regulatory and Industry Affairs, Allegiance Telecom, January 6, 2003.

witness Catherine M. Montfort explained that it provided residential service exclusively via UNE-P (as of the time of that filing). Ms. Montfort's testimony also indicated that AT&T is not adding new mass-market UNE-L customers (other than additional lines for existing UNE-L business customers).<sup>36</sup> Based on this information, I eliminated AT&T from the analysis based on my trigger screen that determines whether a carrier offers retail local exchange service to *residential* mass-market customers. Even if I had not eliminated AT&T on the basis of the residential screen, AT&T would have dropped out of \*\*\*BEGIN PROPRIETARY END PROPRIETARY\*\*\* based on the 1% market share screen. \*\*\*BEGIN PROPRIETARY END PROPRIETARY\*\*\*

#### 4. Comcast

56. Comcast is a traditional cable company that offers telephone service in some, but not all, parts of its existing cable footprint.<sup>37</sup> Consistent with the rationale provided in MCI's concurrently filed comments, I eliminated Comcast as an intermodal provider.
57. Additionally, one might argue that Comcast should not be counted toward the trigger because it does not actually self-deploy switching. Comcast's circuit-

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<sup>36</sup> January 16, 2004 Reply Testimony of Catherine M. Montfort on behalf of AT&T Communications of California, Inc., in CPUC docket R.95-04-043/I.95-04-044 (FCC Triennial Review 9-Month Phase).

<sup>37</sup> Indeed, a *San Francisco Chronicle* article observed that Comcast "offers telephone service only in a limited part of its territory." Todd Wallack, "RCN Looking Shaky - Cable Provider Could Be Forced to File for Bankruptcy," *San Francisco Chronicle*, November 22, 2003.

switched telephony offerings use switches that are owned and operated by AT&T pursuant to the terms of the merger agreement between Comcast and AT&T Broadband.<sup>38</sup> Neither SBC nor Verizon presented an affirmative showing that Comcast's use of these switches met the "exception" criteria described in footnote 1551 of the Commission's *Triennial Review Order*. My own review of the relevant portions of the contracts suggested that the Comcast/AT&T agreement would not qualify for that exception; hence, I did apply this screen to Comcast.<sup>39</sup>

**5. Cox**

58. Like Comcast, Cox also relies exclusively on its cable plant, not on UNE loops. Hence, I eliminated Cox as an intermodal provider, consistent with the rationale presented in MCI's concurrently filed Comments.

**6. ICG Communications**

59. ICG does serve mass-market customers in California via UNE-L. There are, however, two important caveats to this statement. First, ICG serves business customers only, and not residential customers. Second, ICG is *not* accepting new mass-market UNE-L customers in California.<sup>40</sup> In fact, ICG has filed an advice letter with the Commission to transfer some of its existing mass-market customers

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<sup>38</sup> AT&T Final Responses to CPUC Data Requests, footnote 7.

<sup>39</sup> As noted below, the decision to apply the switch ownership screen does not materially affect the final outcome of the trigger analysis for either SBC or Verizon.

<sup>40</sup> Telephone interview with Andrea Guzman, Regulatory Manager, Industry and Corporate Affairs, ICG Communications, January 15, 2004.

(whom ICG had served using collocations that it is decommissioning) to Z-Tel.<sup>41</sup>

I understand that Z-Tel serves mass-market customers via UNE-P, not self-deployed switching.

60. Based on this information, I excluded ICG from the trigger analysis after applying my “active and continuing market participant” screens. Even if I had not excluded ICG at this point, ICG also would have dropped out from the analysis when I applied the “serves residential customers” screen because all of its mass-market UNE-L customers are businesses.
61. Moreover, ICG’s volumes, as reported by SBC, are sufficiently low that **\*\*\*BEGIN PROPRIETARY . END PROPRIETARY\*\*\*** Hence, there are multiple, sufficient reasons not to count ICG toward the retail trigger.

#### 7. MCI

62. Both SBC and Verizon cited MCI (WorldCom) as a triggering carrier. These claims by SBC and Verizon demonstrate the fallacy of the two companies’ application of the trigger test. MCI relies on UNE-P as its predominant vehicle for serving mass-market customers. I understand that MCI serves only a handful of residential customers via UNE-L.<sup>42</sup> Moreover, I also understand that these

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<sup>41</sup> Advice Letter No. 127 of ICG Telecom Group, Inc., filed December 23, 2003.

<sup>42</sup> My understanding of this point and others concerning MCI’s service to residential and small business customers is based primarily on my review of information provided by Andrew M. Graves, a Senior Manager in the Mass Markets Business Unit for MCI.



residential customers represent an MCI trial of UNE-L service and do not constitute a commercial offering of service to residential customers via UNE-L.

63. I also am informed that MCI does not use mass media to market any UNE-L services to mass-market customers. Instead, the media advertising from MCI concerning residential and small business offerings is all directed toward MCI's UNE-P based product. To the extent that MCI serves any "small" business customers via UNE-L, it obtains those customers through direct sales contact—a mode of sales that is inconsistent with provision of mass-market services.
64. Finally, I also understand that the "small businesses" that MCI serves in California via UNE-L often are not small businesses at all. Instead, in many instances, MCI provides three or fewer UNE-L lines to a single business location as part of a package of telecommunications services that includes DS-1 and/or other high-capacity, high-volume services suitable to enterprise customers, as the Commission has defined that term. In addition to the ATM provider that I discussed in Section II.B.2.c above, MCI has determined that the California customers to which it provides a single analog loop at a particular customer location include several large corporations, such as **\*\*\*BEGIN PROPRIETARY . END PROPRIETARY\*\*\*** The ability to serve a small volume of such analog loops as part of a package of services does not provide probative evidence of the ability to overcome economic and operational barriers with respect to mass-market switching.

65. I eliminated MCI from the trigger analysis based on the “serves residential customers” screen. Had I not done so, MCI’s low volumes (which reflect the “incidental” nature of much of its business services via analog UNE loops) would have caused the company to fall out of the analysis **\*\*\*BEGIN PROPRIETARY END PROPRIETARY\*\*\*** after I applied the 1% market share screen.
- \*\*\*BEGIN PROPRIETARY END PROPRIETARY\*\*\***
66. Thus, there are multiple reasons for excluding MCI entirely from the SBC and Verizon California retail trigger counts for mass-market switching.

**8. MPower Communications**

67. Both SBC and Verizon claim MPower Communications as a triggering carrier. MPower indicates that it does serve both residential and small business mass-market customers in California via UNE-L and its own switches;<sup>43</sup> hence, I did not entirely “screen out” MPower in either ILEC’s service territory. **\*\*\*BEGIN PROPRIETARY END PROPRIETARY\*\*\***
68. My treatment of MPower is, like much of the rest of my analysis, conservative in the sense of giving the ILECs’ trigger claims the benefit of the doubt. For example, I do not know the precise number of residential lines that MPower serves in California; however, I have reason to believe that it is not substantial. MPower’s 10-K report to the Securities and Exchange Commission for 2002

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<sup>43</sup> Telephone interview with Todd Lewis, Director of Planning, MPower Communications, January 5, 2004.

indicated that the company's 25,000 residential customers are primarily located in the Las Vegas, Nevada area.<sup>44</sup> Moreover, the terms and conditions of MPower's residential service offering arguably fall outside the product market definition because they are sufficiently dissimilar from those of the California ILECs.

According to the company's California tariff, MPower requires a one-year term commitment and a minimum monthly charge of \$49.95 in addition to substantial one-time fees for service connection. **\*\*\*BEGIN PROPRIETARY END**

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69. Thus, the Commission has multiple bases on which it could exclude MPower entirely from consideration as a retail trigger for mass-market switching.

**9. RCN**

70. RCN is a cable overbuilder that serves very limited geographic areas in both Northern and Southern California using only its own facilities and not UNE loops. Thus, I excluded RCN based on the cost, quality and maturity issues that form the basis for MCI's recommendation to exclude all cable providers from the retail trigger count.

71. Significantly, RCN does not perceive itself to be a triggering carrier. RCN objected to AT&T's data requests in the CPUC's mass-market switching proceeding on the basis that the data requests were irrelevant. In support of its

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<sup>44</sup> MPower Holding Company, Form 10-K for the Fiscal Year Ended December 31, 2002, at F-7.

objections, RCN cited paragraphs 447 and 443 of the *Triennial Review Order*, which indicate respectively that “neither [cable nor wireless] technology provides probative evidence of an entrant’s ability to access the incumbent LEC’s wireless voice-grade local loop and thereby self-deploy local circuit switches” and that “current evidence of [intermodal] switching does not presently warrant a finding of no impairment in regard to local circuit switching.”<sup>45</sup>

**10. SBC Telecom**

72. SBC Telecom provides UNE-L based services to small businesses in Verizon’s territory. The company is an affiliate of SBC California, and therefore qualifies for exclusion from the retail trigger count because it is an ILEC affiliate. Even without disqualifying SBC Telecom on this basis, I eliminated it from the California trigger count because it failed my “serves residential customers” screen. SBC Telecom also fails the 1% market share screen \*\*\***BEGIN PROPRIETARY END PROPRIETARY**\*\*\* wire centers in which Verizon identified it as a trigger. Therefore, SBC Telecom should not count as a triggering carrier.

**11. TelePacific Communications**

73. TelePacific Communications, a company that both SBC and Verizon have claimed as counting toward the retail trigger, is not an active and continuing

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<sup>45</sup> RCN Response to Data Request ATT-SBCT [sic] 1-3(b) in CPUC docket R.95-04-043/I.95-04-044 (FCC Triennial Review 9-Month Phase).

participant in the market. It is a matter of public record that the current mass-market customers that TelePacific serves via UNE-L are, by tariff, grandfathered customers. TelePacific does not permit these customers to add lines to their existing services, and it does not accept new customers.<sup>46</sup>

74. Even if I had not eliminated TelePacific from consideration based on this fact, the 1% market share test would have "screened out" TelePacific in **\*\*\*BEGIN PROPRIETARY. END PROPRIETARY\*\*\*** The limited number of mass-market loops that SBC and Verizon identified as being served via TelePacific's switch is consistent with TelePacific's inactive status as a mass-market UNE-L provider.

## 12. Telscape Communications

75. Telscape is perhaps the most successful provider of UNE-L based services to mass-market customers in California, based strictly on its customer volumes. Telscape serves predominantly residential customers, in addition to some small business customers.<sup>47</sup> I kept Telscape in my analysis up to the point of the market share screen. Even at that point, Telscape passed the 1% market share threshold in several wire centers, and is reflected in my final results for those wire centers.<sup>48</sup>

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<sup>46</sup> TelePacific CPUC Tariff CLC 3-T.

<sup>47</sup> Telephone interview with Jeff Compton, Vice President of Carrier Relations, Telscape, January 5, 2004.

<sup>48</sup> None of these wire centers had as many as two other carriers that passed my screens; hence, Telscape's actual deployment did not provide sufficient evidence of competitive entry to meet the trigger requirements.

76. My inclusion of Telscape in the analysis is in many respects extremely conservative. Telscape's Vice President of Carrier Relations, Jeff Compton, filed testimony before the CPUC that describes the unique circumstances under which Telscape was able to attain its current market share. Based on that testimony, it is my understanding that the current owners of the company obtained many of its assets (although with a substantial installed customer base) in a bankruptcy proceeding, significantly reducing the cost of entry and eliminating numerous entry barriers such as the need for hot cuts (and associated nonrecurring charges) to connect the existing customer base and, more generally, customer acquisition costs. Moreover, the company's customer base is not the broad mass market, but rather a niche market of Spanish-speaking residential customers that place a high value on Telscape's bilingual services and the ability to conduct transactions (including paying monthly bills) in person at a Telscape customer service center.
77. The likelihood that any other carrier could replicate the Telscape business plan and achieve an equal or greater market share via UNE-L is extremely low. I do not consider Telscape's relative commercial success to provide probative evidence that UNE-L competitors in California have overcome the economic and operational barriers to entry that the Commission cited in its *Triennial Review Order*.
78. This is even more true today than it was at the time the record in the California impairment proceeding was developed. Telscape recently announced that it has halted marketing efforts and is not taking new customers in the Fresno area as a

result of the CPUC's decision to increase UNE loop rates in the SBC service territory by 21.5% on a statewide-average basis and roughly 30% in more rural areas of the state.<sup>49</sup>

### 13. XO Communications

79. The final triggering company claimed by both SBC and Verizon is XO. XO does, in fact, serve some small business customers in California via UNE-L;
- \*\*\*BEGIN PROPRIETARY END PROPRIETARY\*\*\*.**<sup>50</sup> XO does not provide service to residential customers and has not indicated any intention of doing so. (This continues to be true for the combined XO/Allegiance, as I have verified by examining the company's California service tariff, available on-line at <http://www.xo.com/legal/tariffs/index.html>. As I noted above, the same is true for Allegiance, which XO acquired.) Therefore, I eliminated XO (and the combined XO/Allegiance) from my analysis based on the "serves residential customers" screen.
80. Had I not applied this screen, XO would have passed through to the 1% market share screen that assesses whether the company's actual deployment provides evidence of overcoming economic and operational barriers to serving mass-

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<sup>49</sup> James S. Granelli, "Phone Firm Retreats, Blaming Lease Rates," *Los Angeles Times*, September 28, 2004. The Fresno area itself is not one of the areas in which SBC sought a finding of no impairment in the CPUC proceeding; however, the Telscape announcement is a clear indication that the overall reduction in profitability for competitors in the wake of the CPUC's adopted UNE price increases will deter UNE-L entry.

<sup>50</sup> Telephone interview with Karen Potkul, XO Communications, January 6, 2004.

market customers via UNE-L. On a combined basis, the XO/Allegiance service volumes fail the 1% market share screen in **\*\*\*BEGIN PROPRIETARY. END PROPRIETARY\*\*\***

**14. Xspedius**

81. Xspedius was not one of the respondents to the CPUC's data requests; nonetheless, SBC claimed the company as counting toward the retail trigger. During the California proceeding, I was able to contact a representative of the company (David Woodsmall, Corporate Counsel), who graciously assisted me in determining the status of Xspedius in California. Xspedius granted me permission to state publicly that the company is *not* certificated in California and does not offer local service in that state.

**C. The ILECs' Trigger Evidence Did Not Demonstrate a Lack of Impairment in Any California Wire Center**

82. The application of the screens I discussed above revealed that most of the triggering companies identified by SBC and Verizon in the CPUC proceeding do not provide a real and competitive alternative for most California mass-market customers. Therefore, as I discuss further below, the trigger evidence does not demonstrate a lack of impairment in any geographic market.
83. To apply the screens that I discussed above, I began with the data underlying SBC's and Verizon's final trigger claims in the CPUC proceeding. Although both ILECs performed their own analyses on a more aggregated basis, both ILECs collected and reported the basic underlying data on a wire-center basis. For UNE-



L carriers, the data came from the ILECs' billing databases and (in the case of Verizon) from some CLEC data responses. For cable providers, SBC relied on data from the local number portability ("LNP") database, whereas Verizon obtained data from the E911 database.<sup>51</sup>

84. In the analysis that follows, I relied on the data underlying SBC's and Verizon's California trigger analysis. With the few exceptions noted below, I did not, for example, attempt to adjust the mass-market loop totals claimed by SBC and Verizon. Therefore, any additional inaccuracies or discrepancies that exist in SBC's and Verizon's analyses are also reflected in my analyses. My use of this information does not constitute agreement with SBC's and Verizon's data.
85. Table 2 below shows the number of SBC California wire centers that have at least three CLECs after I applied each screen. Each column reflects the cumulative application of the screens up to that point. As is clear from the final column, there are *no* wire centers in the SBC California service territory in which SBC's data identified three or more competitors that met all of my screening criteria.

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<sup>51</sup> Verizon manipulated the E911 data to identify the number of cable telephony lines in each ILEC wire center; that information is not reported directly in the E911 database.

**Table 2 - Results of SBC CA Wire Center Analysis**

MSA	Total Number of SBC Wire Centers in MSA	Number of SBC Wire Centers With at least 3 CLECs					
		Included in SBC Trigger Claim <sup>52</sup>	CLECs that Own Switches and Are Unaffiliated <sup>53</sup>	Only Active CLECs with $\geq 5$ Loops	Only Active CLECs that Serve Resid. <sup>54</sup>	Only Active UNE-L CLECs that Serve Resid.	Only Active UNE-L CLECs with $\geq 1\%$ Market Share that Serve Residential <sup>55</sup>
Los Angeles-Long Beach-Santa Ana	106	62	65	57	4	0	0
Riverside-San Bernardino-Ontario	11	1	2	1	0	0	0
Sacramento-Arden-Arcade-Roseville	47	8	8	8	0	0	0
San Diego-Carlsbad-San Marcos	53	24	24	24	7	0	0
San Francisco-Oakland-Fremont	79	36	34	21	0	0	0
San Jose-Sunnyvale-Santa Clara	23	10	9	7	0	0	0
Santa Rosa-Petaluma	18	1	1	0	0	0	0
<b>Total in all 7 MSAs</b>	<b>337</b>	<b>142</b>	<b>140</b>	<b>118</b>	<b>11</b>	<b>0</b>	<b>0</b>

86. Moreover, even if I had not screened out cable providers, there would have been *only one* wire center in which three or more competitors identified by SBC met all of my other criteria. Thus, there is little if any reason to believe that CLECs are

<sup>52</sup> SBC's trigger claim excluded CLECs with fewer than five loops in any wire center. The data in this column are reflected in the SBC "base case" map attached hereto as part of Exhibit 6.

<sup>53</sup> This column includes the effects of treating Allegiance and XO as a single, combined company.

<sup>54</sup> The data in this column are reflected in the SBC "Active Unaffiliated CLECs That Serve Residential Customers" map attached hereto as part of Exhibit 6.

<sup>55</sup> The data in this column are reflected in the SBC "CLECs That Pass All Screens" map attached hereto as part of Exhibit 6.

able to compete with SBC California for mass-market customers without access to unbundled switching.<sup>56</sup>

87. These results also are displayed in the series of maps provided in Exhibit 6. The three SBC maps show the steady diminution from the base case to the final results in the number of wire centers with three or more qualifying carriers as the various trigger screening criteria are applied. The intermediate map ("Active Unaffiliated CLECs That Serve Residential Customers") shows the trivial amount of competition for residential customers, even if one considers cable competition.<sup>57</sup> The final map shows that only a small number of wire centers have *any* competitors that pass all screens, and that in almost all cases, those wire centers have only one such competitor.

88. Table 3 below shows that the results are even more stark for Verizon's California service territory.<sup>58</sup> As I previously mentioned, Verizon's own "final" evidence in

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<sup>56</sup> These results, if anything, may overstate the potential for mass-market competition in light of the price increases that the CPUC recently adopted for SBC's UNEs, including the critical basic UNE loop. As I indicated in the discussion of Telscape above, at least one UNE-L competitor already has cut back its marketing efforts because of this price increase; other competitors soon may follow suit.

<sup>57</sup> As I noted above, Comcast is "screened out" earlier in the analysis because it does not provide service using its own switches. The results at this stage of the process, however, are largely unaffected by the prior elimination of Comcast. The Commission can verify this conclusion by using the spreadsheet tool provided as Exhibit 2 and turning off Screen 1 (the "Switch Ownership" screen).

<sup>58</sup> Verizon also has proposed significant increases to its California UNE prices. This proposal is the subject of an ongoing CPUC proceeding. If Verizon were granted UNE price hikes similar to those recently approved for SBC, the likely result would be even less UNE-L competition for mass-market customers in the Verizon service territory.

the CPUC proceeding showed no wire centers outside the Los Angeles – Long Beach – Santa Ana MSA with three or more qualifying trigger candidates.<sup>59</sup> Application of my screening criteria eliminated all of those candidates. This would be true even without the elimination of the two cable companies that Verizon ultimately included in its trigger count.

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<sup>59</sup> Nonetheless, Verizon continued to claim that the retail trigger was satisfied in the other MSAs based on the additional CLECs that SBC had identified as triggering carriers in the portions of those MSAs lying in SBC's California service territory. January 16, 2004 Reply Testimony of Verizon witness Orville D. Fulp in CPUC dockets R.95-04-043/I.95-04-044 (FCC Triennial Review 9-Month Phase), p. 8.

**Table 3 - Results of Verizon CA Wire Center Analysis**

MSA	Total Number of VZ Wire Centers in MSA	Number of VZ Wire Centers With at least 3 CLECs					
		Included in VZ Trigger Claim <sup>60</sup>	CLECs that Own Switches and Are Unaffiliated <sup>61</sup>	Only Active CLECs with $\geq 5$ Loops	Only Active CLECs that Serve Residential <sup>62</sup>	Only Active UNE-L CLECs that Serve Residential	Only Active UNE-L CLECs with $\geq 1\%$ Market Share that Serve Residential <sup>63</sup>
Los Angeles-Long Beach-Santa Ana	74	22	10	5	0	0	0
Riverside-San Bernardino-Ontario	86	0	0	0	0	0	0
San Francisco-Oakland-Fremont	1	0	0	0	0	0	0
<b>Total in all 3 MSAs</b>	<b>161</b>	<b>22</b>	<b>10</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>0</b>

89. These results also are displayed in the series of maps provided in Exhibit 6. Even the first “base case” Verizon map shows relatively little competition. The intermediate map (“Active Unaffiliated CLECs That Serve Residential Customers”) shows that no wire centers pass at this point in the screening process, even if one considers cable competition.<sup>64</sup> The final map shows that only a small

<sup>60</sup> The data in this column are reflected in the Verizon “base case” map attached hereto as part of Exhibit 6.

<sup>61</sup> This column includes the effects of treating Allegiance and XO as a single, combined company.

<sup>62</sup> The data in this column are reflected in the Verizon “Active Unaffiliated CLECs That Serve Residential Customers” map attached hereto as part of Exhibit 6.

<sup>63</sup> The data in this column are reflected in the Verizon “CLECs That Pass All Screens” map attached hereto as part of Exhibit 6.

<sup>64</sup> As was true for SBC, Comcast is “screened out” earlier in the analysis because it does not provide service using its own switches. Nonetheless, as was also true for SBC, the results at this (continued)

number of wire centers have *any* competitors that pass all screens, and that in

almost all cases, those wire centers have only one such competitor.

90. This concludes my declaration.

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stage of the process are largely unaffected by the prior elimination of Comcast. The Commission can verify this conclusion by using the spreadsheet tool provided as Exhibit 2 and turning off Screen 1 (the "Switch Ownership" screen).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 30 September, 2004.

Terry L. Murray  
Terry L. Murray

**REDACTED -  
FOR PUBLIC INSPECTION**

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**MURRAY DECLARATION**

**EXHIBIT 1**

**CURRICULUM VITAE OF TERRY L. MURRAY**

**REDACTED – FOR PUBLIC INSPECTION**

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## **Curriculum Vitae of Terry L. Murray**

### **President, Murray & Cratty, LLC**

**January 1998 - present**

Economic consulting and expert witness testimony on regulatory and antitrust matters.

### **Principal, Murray and Associates**

**April 1992 - December 1997**

Economic consulting and expert witness testimony on regulatory and antitrust matters.

### **Director, Regulatory Economics, Morse, Richard, Weisenmiller & Associates, Inc.**

**April 1990 - April 1992**

Economic consulting and expert witness testimony, primarily in the fields of telecommunications and energy regulation.

### **California Public Utilities Commission**

**June 1984 - March 1990**

**Director, Division of Ratepayer Advocates (DRA)**

**March 1989 - March 1990**

Headed a staff of over 200 analysts who provided expert witness testimony on behalf of California ratepayers in contested proceedings involving telecommunications, electric, gas, water and transportation utilities.

### **Program Manager, Energy Rate Design and Economics Branch, DRA**

**October 1987 - March 1989**

Managed a staff of over 30 analysts who testified on electric and gas rate design and costing issues, sales forecasts and productivity analyses. Testified as lead policy witness in electric utility incentive ratemaking and transportation policy proceedings.

### **Senior Policy Analyst, Policy and Planning Division**

**March 1987 - October 1987**

Organized *en banc* hearing and drafted notice of investigation for major telecommunications incentive regulation proceeding. Headed Commission task force on open network architecture.

### **Commissioner's Advisor**

**July 1985 - March 1987**

Lead advisor on independent power industry and cost of capital issues. Analyzed proposed decisions on energy, telecommunications, water and transportation issues and made recommendations for Commission action.

### **Staff Economist, Public Staff Division**

**June 1984 - July 1985**

Testified on cost of capital and telecommunications bypass issues. Served on telecommunications strategy task force charged with developing recommendations for post-divestiture regulatory policies.